
By: **Delegate Gordon**

Introduced and read first time: February 13, 2004

Assigned to: Ways and Means

A BILL ENTITLED

1 AN ACT concerning

2 **Income Tax - Payments - Sale of Property by Nonresidents**

3 FOR the purpose of providing that a certain requirement that certain instruments of
4 writing include a description of the total payment to the transferor applies only
5 to transfers for which a certain payment is required; altering a certain definition
6 and defining certain terms for purposes of a requirement that certain payments
7 be made before a deed or other instrument of writing may be recorded under
8 certain circumstances; providing an exemption from the requirement for
9 property transferred pursuant to a deed or other instrument of writing that
10 includes a certain statement; and generally relating to a requirement that for a
11 sale or exchange of certain property owned by a nonresident or nonresident
12 entity certain payments be made before a deed or other instrument of writing
13 may be recorded under certain circumstances.

14 BY repealing and reenacting, with amendments,
15 Article - Tax - General
16 Section 10-912
17 Annotated Code of Maryland
18 (1997 Replacement Volume and 2003 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article - Tax - General**

22 10-912.

23 (a) (1) In this section the following words have the meanings indicated.

24 (2) (I) ["Net proceeds"] EXCEPT AS PROVIDED IN SUBPARAGRAPH (II)
25 OF THIS PARAGRAPH, "NET PROCEEDS" means the total sales price paid to the
26 transferor less:

1 [(i)] 1. debts of the transferor secured by a mortgage or other lien
2 on the property being transferred that are being paid upon the sale or exchange of the
3 property; and

4 [(ii)] 2. other expenses of the transferor arising out of the sale or
5 exchange of the property and disclosed on a settlement statement prepared in
6 connection with the sale or exchange of the property, NOT INCLUDING ADJUSTMENTS
7 IN FAVOR OF THE TRANSFEREE.

8 (II) "NET PROCEEDS" DOES NOT INCLUDE ADJUSTMENTS IN FAVOR
9 OF THE TRANSFEROR THAT ARE DISCLOSED ON A SETTLEMENT STATEMENT
10 PREPARED IN CONNECTION WITH THE SALE OR EXCHANGE OF THE PROPERTY.

11 (3) "Nonresident entity" means an entity that:

12 (i) is not formed under the laws of the State; and

13 (ii) is not qualified by or registered with the Department of
14 Assessments and Taxation to do business in the State.

15 (4) "Resident entity" means an entity that:

16 (i) is formed under the laws of the State; or

17 (ii) is formed under the laws of another state and is qualified by or
18 registered with the Department of Assessments and Taxation to do business in the
19 State.

20 (5) "Total payment" means the net proceeds of a sale actually paid to a
21 transferor, including the fair market value of any property transferred to the
22 transferor.

23 (6) "TRANSFER PURSUANT TO A DEED IN LIEU OF FORECLOSURE"
24 INCLUDES:

25 (I) A TRANSFER BY THE OWNER OF THE PROPERTY TO:

26 1. WITH RESPECT TO A DEED IN LIEU OF FORECLOSURE OF A
27 MORTGAGE, THE MORTGAGEE, THE ASSIGNEE OF THE MORTGAGE, OR ANY
28 DESIGNEE OR NOMINEE OF THE MORTGAGEE OR ASSIGNEE OF THE MORTGAGE;

29 2. WITH RESPECT TO A DEED IN LIEU OF FORECLOSURE OF A
30 DEED OF TRUST, THE HOLDER OF THE DEBT OR OTHER OBLIGATION SECURED BY
31 THE DEED OF TRUST OR ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF THE HOLDER OF
32 THE DEBT OR OTHER OBLIGATION SECURED BY THE DEED OF TRUST;

33 3. WITH RESPECT TO A DEED IN LIEU OF FORECLOSURE OF
34 ANY OTHER LIEN INSTRUMENT, THE HOLDER OF THE DEBT OR OTHER OBLIGATION
35 SECURED BY THE LIEN INSTRUMENT OR ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF
36 THE HOLDER OF THE DEBT SECURED BY THE LIEN INSTRUMENT; AND

1 (II) A TRANSFER BY ANY OF THE PERSONS DESCRIBED IN ITEM (I)
2 OF THIS PARAGRAPH TO A SUBSEQUENT PURCHASER FOR VALUE.

3 (7) "TRANSFER PURSUANT TO A FORECLOSURE OF A MORTGAGE, DEED
4 OF TRUST, OR OTHER LIEN INSTRUMENT" INCLUDES:

5 (I) WITH RESPECT TO THE FORECLOSURE OF A MORTGAGE:

6 1. A TRANSFER BY THE MORTGAGEE, THE ASSIGNEE OF THE
7 MORTGAGE, OR THE ATTORNEY NAMED IN THE MORTGAGE TO:

8 A. THE MORTGAGEE OR THE ASSIGNEE OF THE MORTGAGE;

9 B. ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF THE
10 MORTGAGEE OR ASSIGNEE OF THE MORTGAGE; OR

11 C. ANY PURCHASER, SUBSTITUTED PURCHASER, OR
12 ASSIGNEE OF THE FORECLOSED PROPERTY; AND

13 2. A TRANSFER BY ANY OF THE PERSONS DESCRIBED IN
14 ITEM 1 OF THIS SUBPARAGRAPH TO A SUBSEQUENT PURCHASER FOR VALUE;

15 (II) WITH RESPECT TO THE FORECLOSURE OF A DEED OF TRUST:

16 1. A TRANSFER BY THE TRUSTEES, SUCCESSOR TRUSTEES,
17 OR SUBSTITUTED TRUSTEES UNDER THE DEED OF TRUST TO:

18 A. THE HOLDER OF THE DEBT OR OTHER OBLIGATION
19 SECURED BY THE DEED OF TRUST;

20 B. ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF THE HOLDER
21 OF THE DEBT SECURED BY THE DEED OF TRUST; OR

22 C. ANY PURCHASER, SUBSTITUTED PURCHASER, OR
23 ASSIGNEE OF THE FORECLOSED PROPERTY; AND

24 2. A TRANSFER BY ANY OF THE PERSONS DESCRIBED IN
25 ITEM 1 OF THIS SUBPARAGRAPH TO A SUBSEQUENT PURCHASER FOR VALUE; AND

26 (III) WITH RESPECT TO THE FORECLOSURE OF ANY OTHER LIEN
27 INSTRUMENT:

28 1. A TRANSFER BY THE PARTY AUTHORIZED TO MAKE THE
29 SALE TO:

30 A. THE HOLDER OF THE DEBT OR OTHER OBLIGATION
31 SECURED BY THE LIEN INSTRUMENT;

32 B. ANY DESIGNEE, NOMINEE, OR ASSIGNEE OF THE HOLDER
33 OF THE DEBT SECURED BY THE LIEN INSTRUMENT; OR

1 C. ANY PURCHASER, SUBSTITUTED PURCHASER, OR
2 ASSIGNEE OF THE FORECLOSED PROPERTY; AND

3 2. A TRANSFER BY ANY OF THE PERSONS DESCRIBED IN
4 ITEM 1 OF THIS SUBPARAGRAPH TO A SUBSEQUENT PURCHASER FOR VALUE.

5 (b) [In every] EVERY deed or other instrument of writing REPRESENTING A
6 TRANSFER FOR WHICH THE PAYMENT DESCRIBED IN SUBSECTION (C) OF THIS
7 SECTION IS REQUIRED that effects a change of ownership on the assessment books
8 under the Tax - Property Article[, the total payment shall be described] SHALL
9 INCLUDE A DESCRIPTION OF THE TOTAL PAYMENT in:

10 (1) the recitals or the acknowledgment of the deed or other instrument;
11 or

12 (2) an affidavit under oath that accompanies the deed or other
13 instrument and that is signed by the transferor of the property or by an agent of the
14 transferor.

15 (c) Except as otherwise provided in this section, in a sale or exchange of real
16 property and associated tangible personal property owned by a nonresident or
17 nonresident entity, the deed or other instrument of writing that effects a change of
18 ownership on the assessment books under the Tax - Property Article may not be
19 recorded with the clerk of the circuit court for a county or filed with the Department
20 of Assessments and Taxation unless payment is made to the clerk of the circuit court
21 for a county or the Department of Assessments and Taxation in an amount equal to:

22 (1) 4.75% of the total payment to a nonresident; or

23 (2) 7% of the total payment to a nonresident entity.

24 (d) Subsection (c) of this section does not apply when:

25 (1) a certification under penalties of perjury that the transferor is a
26 resident of the State or is a resident entity is provided by each transferor in:

27 (i) the recitals or the acknowledgment of the deed or other
28 instrument of writing transferring the property to the transferee; or

29 (ii) an affidavit signed by the transferor or by an agent of the
30 transferor that accompanies and is recorded with the deed or other instrument of
31 writing transferring the property;

32 (2) the transferor presents to the clerk of the circuit court for a county or
33 the Department of Assessments and Taxation a certificate issued by the Comptroller
34 stating that:

35 (i) no tax is due from that transferor in connection with that sale
36 or exchange of property;

1 (ii) a reduced amount of tax is due from that transferor in
2 connection with that sale or exchange of property and stating the reduced amount
3 that should be collected by the clerk of the circuit court for a county or the
4 Department of Assessments and Taxation before recordation or filing; or

5 (iii) the transferor has satisfied the transferor's tax liability
6 described in subsection (c) of this section or has provided adequate security to cover
7 such liability;

8 (3) the property TRANSFER is [transferred pursuant to]:

9 (i) A TRANSFER PURSUANT TO A foreclosure of a mortgage, deed of
10 trust, or other lien instrument; or

11 (ii) A TRANSFER PURSUANT TO a deed in lieu of foreclosure;

12 (4) the property is transferred by the United States, the State, or a unit
13 or political subdivision of the State; [or]

14 (5) a certification under penalties of perjury that the property being
15 transferred is the transferor's principal residence is provided by each transferor in:

16 (i) the recitals or the acknowledgment of the deed or other
17 instrument of writing transferring the property to the transferee; or

18 (ii) an affidavit signed by the transferor or by an agent of the
19 transferor that accompanies and is recorded with the deed or other instrument of
20 writing transferring the property; OR

21 (6) THE PROPERTY IS TRANSFERRED PURSUANT TO A DEED OR OTHER
22 INSTRUMENT OF WRITING THAT INCLUDES A STATEMENT OF CONSIDERATION
23 REQUIRED BY § 12-104 OF THE TAX - PROPERTY ARTICLE INDICATING THAT THE
24 CONSIDERATION PAYABLE IS ZERO.

25 (e) (1) Except as provided in this section, the amounts described in
26 subsection (c) of this section shall be collected by the clerk of the circuit court for a
27 county or the Department of Assessments and Taxation when the deed or other
28 instrument of writing is presented for recordation or filing.

29 (2) Within 30 business days after the date the amount payable under
30 subsection (c) of this section is paid, the clerk of the circuit court for the county or the
31 Department of Assessments and Taxation shall pay over to the Comptroller the
32 amount collected under subsection (c) of this section as prescribed by the Comptroller.

33 (f) (1) Amounts collected under subsection (c) of this section and paid over
34 to the Comptroller under subsection (e) of this section shall be deemed to have been
35 paid to the Comptroller on behalf of the transferor from whom the amounts were
36 withheld.

1 (2) The transferor shall be credited with having paid the amounts for the
2 taxable year in which the transaction that is the subject of the tax occurred.

3 (g) The transferee, title insurance producer, title insurer, settlement agent,
4 closing attorney, lending institution, and real estate agent or broker in any
5 transaction subject to this section are not liable for any amounts required to be
6 collected and paid over to the Comptroller under this section.

7 (h) This section does not:

8 (1) impose any tax on a transferor or affect any liability of the transferor
9 for any tax; or

10 (2) prohibit the Comptroller from collecting any taxes due from a
11 transferor in any other manner authorized by law.

12 (i) (1) The Comptroller shall adopt regulations to administer this section.

13 (2) The Comptroller's regulations shall establish procedures for the
14 issuance of the certificate referred to in subsection (d)(2) of this section.

15 (3) The Comptroller's regulations shall establish a procedure by which a
16 transferor may apply for an early refund of the tax collected under this section if the
17 transferor establishes that no tax will be owed or less tax than collected will be owed.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2004.